Supreme Court of the United States.

OCTOBER TERM, 1927.

GREGORIO AGONCILLO, BALDOMERO ROXAS and CATALINO LAVADIA, Petitioners, v. THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Respondent.	No. 573.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE PETITIONERS.

Previous Opinion in the Present Case.

The opinions in the Supreme Court of the Philippine Islands appear at pages 217 to 262 of the Record.

Jurisdiction.

The judgment of the Supreme Court of the Philippine Islands to be reviewed was entered on the 11th day of April, 1927 (R., p. 270). Petition for writ of certiorari was filed and granted, pursuant to Section 7 of the Act of February 13, 1925 (43 Statutes 936, 940).

Statement of the Case.

The judgment here under review was entered by the Supreme Court of the Philippine Islands in an original pro-

ceeding in *quo warranto* brought in the name of the Insular Government against the three petitioners, to oust them as directors of the Philippine National Bank. The judgment entered ousted them finally from their positions as directors of the bank.

The facts in the present case are stipulated (R., pp. 165 *et seq.*) and may be summarized as follows:

The Philippine National Bank was chartered by Act No. 2612 adopted by the Philippine Legislature on February 4, 1916. The act provided for 200,000 shares of stock of the value of 100 pesos each of which the Government was required to purchase 101,000 shares. The voting power of the government stock was vested in the Governor-General as was also the power of appointing, "by and with the consent of the Upper House of the Philippine Legislature," and the power of removing with like consent, the president and vice-president of the bank. It was provided that the bank president should also act as chairman of the board of directors, the other directors to be elected by the stockholders in accordance with the provisions of the General Corporation Law.

On February 20, 1918, the bank charter was amended by the passage of Act No. 2747. The only provision of Act 2747 that need be noted is that which vested the power of voting the government-owned stock in the National Bank "exclusively in a committee consisting of the Governor-General the President of the Senate and the Speaker of the House of Representatives."

On January 30, 1921, the charter of the Bank was again amended by the passage by the Legislature of Act No. 2938. This act made provision for the increase of the capital stock to 500,000 shares of 100 pesos each and provided that of the additional 300,000 shares the Government should purchase 153,000. The act also provided that the Government should purchase all the remaining shares of the first issue. Section 8 of the act provided that shares should not at any

time be sold to the public if as a result thereof the part of the capital stock held by private investors would equal or exceed the part owned by the Government of the Philippine Islands. The stock-voting provision was amended to read as follows:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control', composed of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

It was provided that the president and vice-president of the bank should be elected from amongst the board of directors and it was provided that the president should no longer act as chief executive of the bank. That function was thenceforth to be discharged by a general manager to be appointed by the board of directors with the advice and consent of the board of control.

The board of control was also specifically charged with the performance of certain duties in the management of the bank which may be summarized as follows:

(1) Foreign agencies of the bank might not be incorporated without the consent of the board of control.

(2) The bank might not rediscount commercial paper in cases of emergency without the approval of the board of control.

(3) The general manager of the bank was to be appointed and removed and his salary fixed by the board of directors acting with the advice and consent of the board of control.

(4) The board of control was entitled to receive from the manager of the bank any information in his possession with regard to the operations of the bank.

(5) It was provided that the chief of the auditing department of the bank, as well as other employees of that

department, should be appointed with the advice and consent of the board of control.

(6) The approval of the board of control was required for the payment of compensation to the president and vice-president of the bank should they perform the duties of other officers.

(7) The consent of the board of control was made necessary to permit the suspension of the requirement of maintaining the statutory proportion of reserve funds in the bank.

(8) The approval of the board of control was required to permit the bank to guarantee the payment of certain bonds and to buy bonds of other incorporated companies.

All of the foregoing Philippine legislation was duly signed by the Governor General as required by section 19 of the Philippine Autonomy Act and also submitted to Congress as that section of the Autonomy Act also requires. Under section 19, Congress has reserved to itself the power, if it sees fit, to annul any legislation passed by the Legislature of the Philippine Islands; but up to date none of the acts here in question have been so annulled. The attention of Congress was again specifically directed to this legislation by the Wood-Forbes Report (at p. 38 thereof) and the recommendation made (p. 46) "that Congress declare null and void legislation which has been enacted diminishing, limiting or dividing the authority granted the Governor General under Act No. 240 of the Sixty-fourth Congress, known as the Jones Bill [that is, the Autonomy Act of the Philippine Islands]." (Document No. 325, H. R., Sixty-seventh Congress, Second Session.)

Since the passage of the foregoing legislation relating to the Philippine National Bank there have been two other acts relating thereto—Acts Nos. 3033 and 3174—but these acts have not altered the mode of voting the stock in the Philippine National Bank. It may be noted, however, that the capital stock of the bank was reduced to the present 100,000 shares.

The present dispute arose late in 1926. Prior to December 23 of that year, A. Gideon, one of the directors of the Philippine National Bank, resigned solely with the idea of creating a vacancy and of presenting an occasion for the testing of the validity of the stock-voting provisions of the acts above referred to.

By section 51 of the by-laws of the bank was provided that vacancies in the board of directors should be filled by the vote of the remaining members of the board of directors, pending action by the stockholders at their annual meeting. At the meeting of the board of directors of the bank on December 23, 1926, following the resignation of Gideon it was proposed by one of the other directors that a special meeting of the stockholders be held to fill the vacancy in the board of directors created by the Gideon resignation and also to consider the advisability of repealing section 51 of the by-laws of the bank just referred to. It was frankly stated that the intent of the whole procedure was simply to provide an occasion for testing out the validity of the stock voting provisions of the acts relating to the Philippine National Bank.

Action, however, was postponed to a later meeting which took place December 28, 1926. At that meeting the resolution was discussed and voted on and defeated. Thereupon there was presented a petition signed by the Governor General, but not by the President of the Senate or the Speaker of the House of Representatives, on behalf of the Philippine Government and of five other shareholders of the Philippine National Bank, in which a demand was made that a special meeting of the stockholders of the bank be called for the purpose of considering the advisability of removing the three petitioners as directors of the bank, the repeal of section 51 of the by-laws of the bank, the filling of the vacancy caused by the Gideon resignation, and the election of other directors to replace the petitioners should their removal be determined upon. On the motion being put to vote, of the eight members of the board of directors present, four voted "yes", three voted "no", and the president of the board remained silent. The

president thereupon announced that the motion to call a special meeting as requested by the petition was approved and printed notices were therefore accordingly sent to every shareholder of record of the bank and notice of call was also given by publication in two newspapers of general circulation.

This special meeting was attended by twenty-six private persons owning and representing the owners of 94 of the privately owned shares and also by the Governor-General who asserted his right to attend the meeting in the name of and on behalf of the Philippine Government and to vote the 97,332 shares of government stock. The President of the Senate and the Speaker of the House of Representatives did not attend but sent a written protest against the holding of the meeting, pointing out that the meeting was unauthorized under the Corporation Law and under the by-laws of the bank, in that there had been neither a resolution to call the special meeting by a majority of the directors present at the meeting of the board on December 28, nor a request for the special meeting by those entitled to vote one-third in value of the capital stock, the signature of the Governor-General purporting to represent the government-owned stock being without effect since he was without right by himself to represent that stock.

The president of the bank, acting as chairman of the meeting, ruled that he could not recognize the right of the Governor-General to vote the government stock without the coaction of the President of the Senate and the Speaker of the House of Representatives as members of the board of control. He therefore ruled that a quorum of stockholders was not present at the meeting and so declared the meeting adjourned. The Governor-General protested this ruling. The president of the bank and some of the private shareholders then departed. Thereafter the Governor-General and the remaining stockholders organized by the election of a temporary chairman and secretary and proceeded with the business for which the purported meeting of stockholders had been called. It was determined by unanimous vote of the persons

present to remove the three petitioners as directors of the bank, to amend the by-laws by striking out section 51 and to elect in the place of the three petitioners Messrs. Manuel Yriarte, John Gordon and Leon M. Heras and to reëlect A. Gideon who had resigned from the board in order to precipitate the present dispute.

On January 21, 1927, a regular meeting of the board of directors of the bank was held at its office. The three petitioners, as well as the other directors of the bank whose seats are not being contested, were present. Mr. Heras, who had been elected by the purported meeting of stockholders attended by the Governor-General, had declined to act as director; but the other three persons elected at that meeting presented themselves, produced their certificates of election, and made demand that they be permitted to participate in the meeting of the board of directors of the bank and that the three petitioners withdraw and cease to act as directors. The president of the bank, as presiding officer, recognized the three petitioners as directors and they therefore participated as such in the ensuing meeting of the board of directors.

Shortly thereafter the present proceedings in *quo warranto* were instituted in the name of the Government of the Philippine Islands with the object, as before stated, of ousting the petitioners from their positions as directors of the Philippine National Bank. The Supreme Court of the Philippine Islands (Chief Justice Avancena and Justices Villamor and Villa-Real dissenting) held that the provisions of the acts of the Philippine Legislature relating to the Philippine National Bank which constituted the President of the Senate and the Speaker of the House of Representatives members of the board of control to act with the Governor-General in the voting of the government-owned stock in the Philippine National Bank and to discharge the other duties of the board of control as above set forth were invalid, but that the same provisions were valid in so far as they confided such powers and duties to the Governor General; that they constituted sufficient warrant for his sole exercise of these powers and duties, but that in the

absence of such statutory warrant these powers and duties would belong to the Governor-General by reason of their essentially executive character. The court therefore gave judgment ousting the three petitioners as directors of the Philippine National Bank.

The question herein presented for review is, then, whether those portions of Act 2938 of the Philippine Legislature are really invalid as in conflict with the provisions of the Autonomy Act of 1916 in constituting the President of the Senate and the Speaker of the House of Representatives members of the board of control of the Philippine National Bank.

THE ARGUMENT.

The Supreme Court of the Philippine Islands put its decision in the present case on the same grounds as it did its decision to the same effect in *Milton E. Springer et al.* v. *Government of the Philippine Islands,* which is now also before this court on writ of certiorari as No. 564. Since the legal questions presented in that case are also presented here, the petitioners refer the court to the argument contained in the brief filed by the petitioners in No. 564, which argument, *mutatis mutandis,* petitioners ask the court to consider as incorporated herein by reference.

Beyond what is stated in the brief in No. 564 little need be said. The only difference in the legislation in the two cases is in respect of the provisions of Act 2938 laying certain specific duties upon the board of control of the Philippine National Bank beyond the general duty of voting the government stock in the bank.

If the court will run over the summary of these specific duties found in the statement of facts, *supra,* or run over the sections of Act No. 2938 printed in the appendix, *infra,* it will see that these specific duties are all duties relating to the management of the bank. While it is, no doubt, unusual to confide to the discretion of the majority stockholder such matters as these specific duties cover, there is no rule of law which forbids a legislature in creating a corporation to pro-

vide for its management in this fashion if it see fit. Majority stockholder control, moreover, of the matters specifically covered by the provisions of Act 2938 under discussion exists indirectly in the case of all corporations through the stockholder control of the personnel of the board of directors. In the case of Philippine corporations this indirect control is very effective for the reason that by section 34 of Act No. 59 which is the General Corporation Law of the Philippine Islands directors of a corporation may be removed from office at any time by the vote of stockholders holding or representing two-thirds of the subscribed capital stock entitled to vote. (See appendix to this brief, *infra.*)

If it be contended that the corporate entity is to be disregarded and that the duties by these sections imposed upon the board of control are to be regarded as duties involving the care and management of government property, the considerations set forth in the brief submitted in No. 564 constitute a sufficient answer. The powers and duties covered by these sections of Act No. 2938 belong, for the purposes of the present case, in exactly the same category as the stock-voting power.

But there is a shorter answer to any contentions based on these sections, *viz.*, that they are not herein involved. The stock-voting power alone is concerned in the present case since only the title of petitioners as directors is at issue.

It was intimated in one of the opinions in the court below (R., p. 241) that even if it were granted that the President of the Senate and the Speaker of the House of Representatives had a right to participate in the voting of the government stock, still, since they were not present at the special stockholders' meeting referred to in the statement of facts, *supra*, and were not there represented by proxy, they could not object to the sole voting of the stock by the Governor-General as the only person representative of the government stock present at the stockholders' meeting. It was suggested that since Act No. 2938 contains no provisions as to how the stock shall be voted when there is a difference of opinion

among the members of the board of control, the members of the board present at the stockholders' meeting would have the right to vote the stock held by the government.

It seems quite obvious that this suggestion is without merit. The provision of section 4 of Act 2938 is that the stock shall be voted by the *board*—*i. e.*, by the board as an entity, not by its members individually. In the absence of specific provision it is to be assumed that a majority of the board would control. Certainly there is no warrant for assuming that in the case of difference of opinion they are entitled to vote individually or that the government vote is to be cast by whatever individual members happen to attend a stockholders' meeting.

Moreover, if as the court assumed the President of the Senate and Speaker of the House of Representatives were entitled to share in voting the government stock, they were also entitled to share in voting in respect of calling a special stockholders' meeting. The petition presented to the directors to hold the special meeting was not signed by either the President of the Senate or the Speaker of the House of Representatives and they promptly protested against the holding of the meeting. Even under the court's assumption that in the case of difference of opinion the members of the committee were to be entitled to vote the government stock individually, the petition was not such as to authorize the holding of the meeting under section 43 of the by-laws of the bank (R., p. 64). At most under this assumption, the Governor-General's signature could represent only one-third of the 97,332 shares held by the government—*i. e.*, 32,444. The other five signatures to the petition represented in all only 9 shares of stock (R., p. 182). This obviously is less than one-third of the outstanding 100,000 shares of stock in the Philippine National Bank (R., p. 188) and so, as the President of the Senate and Speaker of the House pointed out in their protest, less than the third required to authorize the calling of a special stockholders' meeting under section 43 of the by-laws (R., p. 64).

There was likewise no such resolution by the board of directors as under section 43 of the by-laws could authorize the meeting. A majority of the board of directors present at the meeting at which a special stockholders' meeting is determined upon is required by section 55 of the by-laws (R., p. 68). There were eight directors present at that meeting in the present case, of whom four voted for the holding of the meeting, three against it and one, the chairman, remained silent.

The want of authority for the stockholders' meeting from this point of view was also pointed out by the President of the Senate and the Speaker of the House in their protest (R., p. 191). Since, then, there was no sufficient authorization of the meeting if the President of the Senate and the Speaker of the House were entitled to participate in the voting of the government stock, there can be no doubt that their prompt protest saved their rights. All that happened at the purported stockholders' meeting was a nullity unless the Governor-General was entitled under all circumstances alone to vote the government stock. It is thus clear that there is no special ground presented in this case to justify the judgment of the court below if the President of the Senate and the Speaker of the House be entitled to participate in the voting of the government stock.

It is submitted that the President of the Senate and the Speaker of the House were entitled to such participation in the stock-voting power and that the judgment of the court below should be reversed and the title of the petitioners to their positions as directors of Philippine National Bank confirmed.

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APPENDIX.

ACTS OF THE PHILIPPINE LEGISLATURE.

Act No. 2612 of the Philippine Legislature.

Sec. 3 fixes capital at 20,000,000 pesos; 200,000 shares; 100 pesos per share.

"Sec. 4. The Government of the Philippine Islands not later than January thirty-first, nineteen hundred and seventeen, shall purchase one hundred and one thousand shares at par of the said National Bank, the payment for said shares of the Government to be made as hereinafter provided. Ninety-nine thousand shares of said capital stock shall be offered to the public at par as hereinafter provided."

Sec. 5 appropriates for the payment of Government shares, 1,300,000 pesos out of general funds of the Insular Treasury, and the further sums of 1,000,000 pesos on or before July 31, 1916, and 1,000,000 pesos on or before January 31, 1917, "which shall be invested from the insurance fund created by Act No. 1728, the public works bonds sinking fund created by Act No. 1729, and the friar lands bonds sinking fund created by Act No. 2550", and then continues: "* * * *And provided further*, That the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the Government and the voting power of all stock purchased for the benefit of the insurance fund, of the public works bonds sinking fund, and of the friar lands bonds sinking fund, shall be vested exclusively in the Governor General."

"Sec. 20. The affairs and business of the National Bank shall be managed by a board of directors consisting of the president of the Bank, who shall be chief executive thereof and chairman of the board at the same time, one vice-president who shall assist the president and act in his stead in case of absence or incapacity, and five members elected as hereinafter provided. * * *."

"Sec. 21. The president and vice-president shall be appointed by the Governor General, by and with the consent of the upper house of the Philippine Legislature, and may be

removed for cause by said Governor General, by and with the consent of the said house. The five remaining members shall be elected and may be removed in accordance with the provisions of Act No. 1459, the Corporation Law."

"Sec. 47. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury for the general funds thereof and shall be available for any appropriation."

Act No. 2747 of the Philippine Legislature.

"Sec. 4. * * * The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

Act No. 2938 of the Philippine Legislature.

Sec. 3 increases Bank's capital from 20,000,000 pesos to 50,000,000 pesos by a new "second" issue of 300,000 shares.

"Sec. 4. The Government of the Philippine Islands not later than June 30, 1921, shall purchase all remaining shares of the first issue and part of those of the second issue to the aggregate number of not less than one hundred and fifty-three thousand, at par, the payment for said shares of the Government to be made as hereinafter provided. The remaining shares may be offered to the provincial and municipal governments or to the public at a price not below par which the board of directors of the said bank shall from time to time determine; *Provided,* That the Government of the Philippine Islands upon agreement with the board of directors of the bank, may at any time after June 30, 1921, purchase all or part of the stock on hand at a price not below par.

"The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Island shall be vested exclusively in a board the short title of which shall be "Board of Control," composed of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

"Sec. 5. There are hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated, such sums as may be necessary for the payment of the shares to be purchased by the Government of the Philippine Islands; *Provided,* That the capital and surplus of the Agricultural Bank of the Philippine Islands shall be applied primarily to said payment; *And provided further,* That no sum shall be set up on the books of the Auditor until it shall be necessary to make the payment or payments authorized by this Act."

"Sec. 8. At no time shall shares be sold to the public, if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands."

"Sec. 10. Said National Bank is hereby authorized:

* * * * * * * * *

(f) To invest a sum not exceeding ten per cent of its paid up capital in the purchase of shares of stock of any banking

corporation constituted under the laws of any State of the United States and to hold the same: *Provided, however,* That, subject to resolution of the board of directors and the approval of the Board of Control, it may incorporate any of its foreign agencies now or hereafter established, under the laws of the country or estate [*sic*] where the same may be located, and may retain the stock of such corporation as an investment."

"Sec. 14. Said National Bank is hereby authorized to issue circulating notes * * * *Provided, however,* That in case of emergency, and subject to the approval of the Board of Control, the Secretary of Finance may authorize the National Bank of rediscount commercial paper of not over six months' maturity secured by exports or imports, and may issue against said commercial paper circulating notes * * *.

Sec. 16 increases number of directors to nine.

Sec. 17 provides that directors shall elect president and vice-president from amongst themselves.

"Sec. 18. The orders and resolutions of the board of directors shall be carried out by a general manager who shall be chief executive of the bank and shall be paid an annual salary to be fixed by the board of directors, with the approval of the board of control, and an assistant general manager who * * * shall be paid a salary to be fixed by the board of directors, with the approval of the board of control. The general manager shall be appointed by the board of directors, with the advice and consent of the board of control, and may be removed in a like manner."

"Sec. 21. The Secretary of Justice shall be attorney for said National Bank * * *."

"Sec. 22. The Insular Auditor shall be *ex officio* auditor of the National Bank and shall, with the advice and consent of the board of control, appoint a representative who shall be chief of the auditing department of the bank. All the other employees of the department shall be appointed by the Insular Auditor who, with the approval of the board of control, shall fix the salaries of the same as well as that of his representative, the chief of the department. * * * The representative of the Insular Auditor shall make a quarterly re-

port on the condition of the bank to the Governor General of the Philippine Islands, to the Secretary of Finance, to the Board of Control, to the Insular Auditor, and to the board of directors of said bank * * *."

"Sec. 23. All the other officers and employees of the National Bank shall be appointed and removed by the Board of Directors on recommendation of the general manager. Said officers and employees shall not be subject to the Civil Service Law, and their duties and compensations shall be fixed by the general manager, with the approval of the board of directors: *Provided, further,* That whenever the president or vice-president, by order of the Board of Directors, shall temporarily or permanently perform duties incumbent upon other officers or employees, they may be granted compensation additional to the bonus fixed by this Act for the president and vice-president; but the resolution of said board shall not take effect until the written approval of the members of the Board of Control has been obtained. The orders of said board of directors in this respect may be modified or repealed at any time, provided they are approved in each case by the Board of Control."

"Sec. 38. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury, for the general funds thereof."

"Sec. 44. The National Bank shall at all times keep on hand * * * a sum in lawful money * * * computed as follows:

"Twenty-five per cent of the circulating notes outstanding, * * *.

"Twenty per cent of the demand deposits outstanding * * *: *Provided, however,* That the Secretary of Finance at the request of the board of directors of the bank, duly approved by the Board of Control, whenever in his judgment the general interests of the country require it, shall be authorized to suspend for such period as may be necessary, the requirement of maintaining the proportion of the reserve specified in this Act. * * *".

"Sec. 45. The National Bank is hereby authorized to guarantee * * * bonds issued by duly incorporated companies for the erection of and addition or additions to industrial plants or manufactories principally used for the manufacture and preparation of the products of the Philippine Islands;

Provided, however, The such guarantee shall only be lawful when approved by the Board of Control.

"Subject to the same approval, the National Bank is hereby authorized to purchase bonds issued by any duly incorporated company engaged in the manufacture or preparation of products in the Philippine Islands. * * *."

Act No. 1459 of the Philippine Legislature (General Corporation Law.

"Sec. 34. Directors of the corporation may be removed from office by vote of two-thirds of the members entitled to vote, or if the corporation be a stock corporation, by a vote of the stockholders holding or representing two-thirds of the subscribed capital stock entitled to vote: *Provided, however,* That such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose * * *."

Acts of Congress

The pertinent acts of Congress of the United States will be found printed in the appendix to the brief submitted in No. 564, Milton E. Springer v. Philippine Islands.